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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 390

OZARK BUTANE COMPANY, INC.,
a Corporation of the State of Arkansas, *Appellant*

v.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD
and W. D. RUSH,
Liquefied Petroleum Gas Administrator, *Respondents*

**On Appeal From the United States District Court
For the Western District of Oklahoma**

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINION BELOW

The memorandum opinion of the United States District Court for the Western District of Oklahoma was filed on February 17, 1964, and the judgment of the Court was entered on April 16, 1964. An order overruling appellants motion for a new trial was entered on June 12, 1964. The opinion, judgment and order have not as yet been reported.

JURISDICTION

This suit was instituted by the filing of a complaint

by appellant, a corporation of the State of Arkansas, in the United States District Court for the Western District of Oklahoma on June 25, 1963, pursuant to 28 U.S.C. Section 2281 et seq., to obtain a decree that Title 52 Oklahoma Statutes Annotated, Section 420.14 (52 O.S. 420.14) is unconstitutional, and requesting that a decree be entered adjoining the enforcement, operation or execution of 52 O.S. 420.14 and declaring the same to be unconstitutional.

It was alleged that 52 O.S. 420.14 denied to the appellant the equal protection of the laws and due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and that the said law as applied to appellant is an unreasonable interference with interstate commerce contrary to the Commerce Clause in Article 1, Section 8, Clause 3 of the Constitution of the United States, and that the law is an arbitrary, discriminatory and excessive exercise of the police power of the State of Oklahoma. Appellant was joined in its complaint by two individual persons who were and are officers and major stockholders of appellant. These parties had further complained to the Court that 52 O.S. 420.14 denied to them the privileges and immunities as citizens of the several states guaranteed by the Fourteenth Amendment to the Constitution of the United States. A statutory three judge Federal court was impaneled on August 6, 1963, but said impaneling order was thereafter vacated and a new panel was established on August 29, 1963. The United States District Court for the Western District of Oklahoma, in a memorandum opinion filed on February 17, 1964, sustained the validity of 52 O.S. 420.14, and by judgment entered on April 16, 1964 held the statute to be valid and constitutional, dismissing the complaint filed by appellant. On June 12, 1964 the Court issued its order denying appellant's motion for a new trial.

Notice of Appeal was filed by Ozark Butane Company, Inc., on June 16, 1964, with the United States District Court for the Western District of Oklahoma.

The jurisdiction of the Supreme Court of the United States to review the judgment of the United States District Court for the Western District of Oklahoma on appeal is confirmed by 28 U.S.C. Section 1253. That such jurisdiction exists in the circumstances of this case is sustained by the following decisions: *Harrison* v. *St. Louis & San Francisco Railroad Company*, 232 U.S. 318, 58 L. Ed. 621, 34 S. Ct. 333 (1914); *Donald* v. *Philadelphia & Reading Coal & Iron Co.*, 241 U.S. 329, 60 L. Ed. 1027, 36 S. Ct. 563 (1916); *Terral* v. *Burke Const. Co.*, 257 U.S. 529, 66 L. Ed. 352, 42 S. Ct. 188 (1922); *Airway Electric Appliance Corp.* v. *Day*, 266 U.S. 71, 69 L. Ed. 169, 45 S. Ct. 12 (1924); *Baldwin* v. *G.A.F. Seelig*, 294 U.S. 511, 79 L. Ed. 1032, 55 S. Ct. 497 (1935).

STATUTE INVOLVED

52 O.S. 420.14
Laws 1963, c.27, Sec. 1

> "The State Liquefied Petroleum Gas Administrator shall not issue or renew any registration permit or license to any person, firm, or corporation who is a resident of, or whose principal place of business is located in, a state other than Oklahoma unless the laws of such other state, and the rules and regulations of the authority governing the storage and dispensing of liquefied petroleum gas permit the operation of such business by citizens, firms or corporations of Oklahoma under the same or substantially similar terms and conditions as those required for such operation in this state."

The full text of Oklahoma law pertaining to the Liquefied Petroleum Gas business is found at 52 O.S. Chapter 8, Sections 420.1 to 420.14, inclusive.

QUESTIONS PRESENTED

Is the application of 52 O.S. 420.14 to Ozark Butane Company, Inc., an Arkansas corporation engaged in interstate commerce, prohibiting Ozark Butane Company, Inc., from engaging in business in the State of Oklahoma, in conflict with the Constitution of the United States, specifically:

1. The Commerce Clause in Article 1, Section 8, Clause 3 of the Constitution of the United States, because the law discriminates against interstate commerce by excluding appellant from doing business within the State of Oklahoma?

2. The equal protection clause of the Fourteenth Amendment to the Constitution of the United States because the law excludes appellant from continuing the conduct of its business within the State of Oklahoma?

3. The Constitutional right of the appellant to resort to the Federal Courts, pursuant to 28 U.S.C., Section 1332, because the law would require appellant to become a citizen of the State of Oklahoma in order to continue the conduct of its business therein.

STATEMENT

Ozark Butane Company, Inc., an Arkansas corporation domesticated to do business in Oklahoma, is engaged in the wholesale and retail transportation, distribution, purchase and sale of liquefied petroleum gas with installations in Oklahoma and Arkansas and with customers in Oklahoma, Arkansas and Missouri. Since the inception of the

corporation in 1946, its principal place of business has been in Siloam Springs, Arkansas. which is practically at the border of Oklahoma. All of its purchases of gas are made in the State of Oklahoma, and all of the gas so purchased is transported directly to its plant at Siloam Springs, Arkansas. where it is stored in facilities there located. The gas is subsequently transported to local installations in Oklahoma and in Arkansas, where it is again stored and subsequently moved and sold by Ozark Butane Company, Inc., to its customers. All of the transportation is conducted by the appellant, and in trucks owned by the appellant.

Some of the gas brought back and placed into Oklahoma storage tanks is thereafter delivered to customers in Arkansas; similarly some of the gas which is stored in local installations in Arkansas is transported and sold direct to customers in both Oklahoma and Missouri.

Since 1946 the appellant has been issued an annual license to carry on its business in and through Oklahoma where it has acquired extensive property and valuable business interests. Approximately one-third of appellant's business is carried on in and through the State of Oklahoma. Approximately thirty percent of its gross revenues are received from sales in the State of Oklahoma.

The respondent, Oklahoma Liquefied Petroleum Gas Board, is a regulatory administrative agency of the State of Oklahoma created by 52 O.S. 420.3, and respondent W. D. Rush was the Administrator of said Board. Ed T. Sabin is now the Administrator. This Board administers 52 O.S. 420.14, the statute complained of herein. In the past the Board has issued a registration permit annually to the appellant, which permit expires on September 1st of each year. The last registration permit issued by the Board to Ozark Butane Company, Inc. expired on September 1, 1963.

On March 26, 1963, Oklahoma Senate Bill No. 122 was signed into law by the Governor of the State of Oklahoma, and has been codified as 52 O.S. 420.14. Thereafter, on May 23, 1963, the Attorney General of the State of Oklahoma, in Opinion No. 63-204, advised the respondent concerning the administration to be followed in carrying out the purposes of 52 O.S. 420.14. (Defendant's Exh. No. 2). On May 27, 1964, the respondents wrote to an officer of appellant, advising him of the opinion by the Attorney General, and further informing him that because the laws, rules and regulations of the State of Arkansas do not meet the requirements of Oklahoma law, appellant's permit to operate in the liquefied petroleum gas business in Oklahoma would not be renewed on September 1, 1963. (Plaintiff's Exh. No. 8). On July 16, 1963 the respondents wrote to appellant, and after referring to the earlier letter of May 27 and the opinion of the Attorney General of May 23, refused and returned the application theretofore submitted by appellent for a renewal of its permit. (Plaintiff's Exh. No. 9). The refusal to renew appellant's permit was based solely upon the provisions of 52 O.S. 420.14, and was in conformity with the opinion of the Attorney General of the State of Oklahoma.

On July 25, 1963, appellant filed a complaint with the United States District Court for the Western District of Oklahoma, requesting that a statutory three judge Federal court be impaneled, pursuant to 28 U.S.C. Section 2281, for the purpose of entering a decree enjoining the enforcement, operation or execution of 52 O.S. 420.14, and declaring the said statute to be unconstitutional, and further, to restrain the respondents from enforcing or executing the said statute. Appellant further prayed that the respondents be mandatorily enjoined to renew the permit of Ozark Butane Company, Inc., for the ensuing year.

On August 30, 1963, the Court issued a temporary restraining order prohibiting the enforcement of 52 O.S. 420.14 against the appellant and ordering the respondents to issue to the appellant a temporary license to operate in Oklahoma pending the final determination of this action. Thereafter, on September 18, 1963, the Court ordered that the temporary restraining order, above described, would continue in effect until the matter was presented on its merits.

On October 18, 1963, a Motion to Intervene was filed by the Oklahoma Liquefieid Petroleum Gas Association. The Court granted leave to intervene on the same date. Thereafter the said intervenor, through intervening as "amicus curae" in pursuit of its own economic interests, joined the respondents in support of the statute, in opposition to the appellant.

Trial on the merits was held on November 1, 1963. On February 17, 1964 the United States District Court for the Western District of Oklahoma, in a memorandum opinion by District Judge Daugherty, found that 52 O.S. 420.14 was valid and constitutional as applied to the appellant and that the complaint should be dismissed and the temporary restraining order should be dissolved. The opinion found that Ozark Butane Company, Inc., had not been within the jurisdiction of the State of Oklahoma since September 1, 1963, and therefore was not entitled to equal protection of the laws pursuant to the Fourteenth Amendment. The Court found this to be so because since September 1, 1963, appellant had not satisfied the conditions required by the State of Oklahoma in order for it to do business in Oklahoma. The Court further held that the application of 52 O.S. 420.14 did not deny the appellant due process of law, holding that the Fourteenth Amendment does not deny to a state the power to exclude a foreign corporation from doing business

within it. Finally, the Court found that the activities and operations of Ozark Butane Company, Inc., in Oklahoma amount to intrastate commerce and not interstate commerce. The Court noted that if the said operations were considered to be interstate commerce, the regulations imposed by 52 O.S. 420.14 would not constitute an unreasonable burden upon interstate commerce. Judgment was entered on April 16, 1964, dismissing the complaint and dissolving the temporary restraining order.

On April 16, 1964 Ozark Butane Company, Inc. applied for a stay of execution of the judgment stating that a motion for rehearing and supporting brief would be filed within the ten days allowed under Rule 59 F.R.C.P. On the same date, the Court issued an order staying execution of the judgment pending final disposition of the motion for rehearing.

On June 12, 1964 the United States District Court for the Western District of Oklahoma denied the motion for a new trial, and vacated the order staying execution of judgment.

On June 16, 1964 Ozark Butane Company, Inc., filed with the United States District Court for the Western District of Oklahoma a notice of appeal to the Supreme Court of the United States. On June 17 appellant applied to the Court to stay the execution of the judgment and to continue in effect the restraining order dated August 30, 1963, pending disposition of its appeal to the Supreme Court of the United States. On July 2, 1964 the United States District Court for the Western District of Oklahoma ordered that the judgment filed on April 16, 1964 be stayed and the restraining order dated August 30, 1963 be continued in effect pending final disposition of appellant's appeal to the Supreme Court of the United States.

THE QUESTIONS ARE SUBSTANTIAL

This appeal presents important constitutional questions involving the right of a state by means of retaliatory legislation to exclude persons from other states from doing business within its borders. The precise points in issue have not been settled by this Court, but, based upon the fundamental principles heretofore enunciated in the decisions of this Court, it is believed that the application of 52 O.S. 420.14 to Ozark Butane Company, Inc., is in violation of the Constitution and Statutes of the United States. In no prior case has such a retaliatory statute, directly suppressing interstate commerce and denying both the equal protection of the laws and due process of the law to a corporation engaged in interstate commerce within the state involved, been upheld by this Court.

1. The state statute involved herein has been aptly described by the Attorney General of the State of Oklahoma as a "retaliatory statute." (Defendant's Exhibit No. 2). The Court below attempted to avoid the said designation by finding that the appellant was not engaged in interstate commerce in the State of Oklahoma. This finding is contrary to the evidence of record and to the description and definition of interstate commerce as given in *United States* v. *Swift & Co.* 122 Fed. 529 (1903), which definition is set out and approved in *United States* v. *Southeastern Underwriters Association* 322 U.S. 533, 88 L. Ed. 1440, 64 S. Ct. 1162 (1944).

Viewing the business of Ozark Butane Company, Inc. as an entirety, as contemplated by the definition in Swift, each phase in each movement calculated to bring about an eventual act of exchange reaches into two or more states. This is particularly apparent in the answers to the inter-

rogatories propounded by defendants below, and set forth in defendants' Exhibit No. 1.

Though it is agreed that a state may impose reasonable burdens upon interstate commerce and reasonably interfere with its free flow through proper regulations pursuant to a legitimate exercise of its police power, a state cannot exclude from its jurisdiction a corporation legitimately engaged in interstate commerce. *Western Union Telegraph Co.* v. *Kansas* 216 U.S. 1, 54 L. Ed. 355, 30 S. Ct. 190 (1909).

In *Baldwin* v. *G.A.F. Seelig,* 294 U.S. 511, 79 L. Ed. 1032, 55 S. Ct. 497 (1935), this Court struck down similar retaliatory legislation which sought to exclude from a state a corporation domesticated in another state. In *Baldwin,* a New York statute sought to prohibit the sale within the State of milk brought from outside the State. The intention was to protect and promote the economic welfare of the farmers of New York. This Court held, however, that such a restriction, where not based upon reasonable extension of the police power of the state, would be contrary to the intent and purpose of the commerce clause, since such open rivalries and reprisals by the states were meant to be averted by subjecting commerce between the states to the power of the Federal Government.

In *Hood* v. *Dumond* 336 U.S. 525, 93 L. Ed. 865, 69 S. Ct. 657 (1949), this Court similarly struck down a New York Statute the effect of which was to suppress interstate commerce. Once again, this Court held in the *Hood* case that the obstruction and burden upon interstate commerce was such that it could not be condoned as a reasonable extension of the police power of the state.

In the instant proceeding the State of Oklahoma has sought to exclude the appellant from continuing to conduct

its interstate business in the State of Oklahoma. The sole purpose of the statute involved is to protect the economic welfare of Oklahoma competitors of the appellant. There is no allegation or contention that the statute is designed for public safety or the protection of consumer interests. As in the *Baldwin* and *Hood* cases, such an obstruction to the free flow of commerce cannot be condoned in the absence of a valid extension of the police power of the state. It is appellant's contention herein that the state has, through 52 O.S. 420.14, improperly and illegally prohibited it from the conduct of the interstate business in the State of Oklahoma.

2. The Court below has held that appellant can not be heard to complain that it was denied equal protection of the laws or due process of the law by 52 O.S. 420.14 because the appellant had no standing in the State of Oklahoma. The Court reasoned that since appellant did not have the renewal license pursuant to 52 O.S. 420.14, it was not properly within the State, and was not, therefore, entitled to the protections of the Fourteenth Amendment to the Constitution of the United States. By this reasoning the court below has indirectly admitted what appellant herein contends—that prior to the enactment of 52 O.S. 420.14, appellant was properly within the jurisdiction of the State of Oklahoma and was entitled to the equal protection of the laws within this jurisdiction, but that the enactment of this retaliatory legislation was intended to and did effectively deprive appellant of the equal protection of the laws.

At the time 52 O.S. 420.14 was enacted, it is acknowledged by all that appellant was properly conducting its business within the State of Oklahoma, having been previously and properly licensed. In *Hanover Fire Ins. Co.* v. *Carr* 272 U.S. 494, 71 L. Ed. 372, 47 S. Ct. 179 (1926), this Court, expending the principal earlier enunciated in

Southern Railway Co. v. *Greene*, 216 U.S. 400, 54 L. Ed. 536, 30 S. Ct. 287 (1910), held that a distinction is to be made between foreign corporations seeking to enter the State for the first time and those which have been previously admitted and seek an annual renewal license to continue doing business. These cases hold that the issuance of the first license gives the foreign corporation a quasi-domestic citizenship entitling it to equal protection of the laws. Therefore, appellant, which was properly licensed to conduct operations in the State of Oklahoma over a period of 17 years, was entitled to the equal protection of the laws within the State of Oklahoma.

52 O.S. 420.14 imposes an unequal burden upon appellant, situated within its borders, as compared to the burden placed upon other individuals similarly situated, i.e. it imposes burdens on it which are not imposed upon other corporations which chance to come from states whose Liquefied Petroleum Gas Laws are not dissimilar. The imposition of such an unequal burden has been consistently held by this Court to be a denial of the equal protection of the laws. *Airway Electric Appliance Corporation* v. *Day*, 266 U.S. 71, 69 L. Ed. 169, 45 S. Ct. 12 (1924).

Ozark Butane Company, Inc., was entitled to the equal protection of the laws within the State of Oklahoma, but has been deprived of this protection by the application of 52 O.S. 420.14.

3. 52 O.S. 420.14 would require Ozark Butane Company, Inc., as a condition to renewal of its license, to remove its principal place of business from Arkansas to Oklahoma. The statute, as applied to the appellant, therefore employs compulsory citizenship as an alternative to expulsion from the state. As such the statute would destroy appellant's foreign character for diversity purposes in determining juris-

diction of the Federal Courts pursuant to 28 U.S.C. Section 1332.

State statutes which have directly or indirectly required a surrender of the right of foreign corporations to pursue causes in Federal Courts have been declared unconstitutional. *Harrison* v. *St. Louis & San Francisco Railroad Company*, 232 U.S. 318, 58 L. Ed. 621, 34 S. Ct. 333 (1914); *Donald* v. *Philadelphia & Reading Coal & Iron Co.*, 241 U.S. 329, 60 L. Ed. 1027, 36 S. Ct. 563 (1916); *Terral* v. *Burke Const. Co.*, 257 U.S. 529, 66 L. Ed. 352, 42 S. Ct. 188 (1922). These cases hold that it is beyond a states power to impose as a condition of doing business by foreign corporations, the surrender of their right to remove causes into the Federal Courts, whether this is exacted directly or indirectly through compulsory citizenship.

The court below did not consider this aspect of 52 O.S. 420.14 which was raised in Plaintiff's Motion for New Trial.

CONCLUSION

For the reasons above stated, the questions presented by this appeal are substantial and are of public importance. It is respectfully submitted that probable jurisdiction should be noted.

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APPENDIX

APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 63-248 Civil

JACK GORUM, CHARLES GORUM AND OZARK BUTANE COMPANY, INC., a corporation, *Plaintiffs*,

v.

OKLAHOMA LIQUEFIED PETROLEUM GAS BOARD AND W. D. RUSH, LIQUEFIED PETROLEUM GAS ADMINISTRATOR, *Defendants*,

and

OKLAHOMA LIQUEFIED PETROLEUM GAS ASSOCIATION, *Intervenor*.

David M. Thornton, Attorney for Plaintiff

Charles Nesbitt, Attorney General of Oklahoma,
Lee W. Cook, Assistant Attorney General of Oklahoma
Attorneys for Defendants.

Duke Duvall, Duvall and Mead
Attorney for Intervenor.

BEFORE PICKETT, *Circuit Judge*, BOHANNON and DAUGHERTY, *District Judges*.

MEMORANDUM OPINION—By Daugherty, District Judge

Memorandum Opinion

In this case the plaintiffs invoke the jurisdiction of a three-judge federal court under the provisions of Title 28, United States Code, Sections 2281 et seq. to obtain a

decree that Title 52 Oklahoma Statutes Annotated, 420.14 is unconstitutional and void by reason of said law denying them (1) the privileges and immunities as citizens of the several states, (2) the equal protection of the laws, and, (3) due process of law, all in violation of the 14th Amendment to the United States Constitution, and said law as applied is (4) an unreasonable interference with interstate commerce and (5) is an arbitrary, discriminatory and excessive exercise of the police power of the state of Oklahoma.

Title 52 O.S.A. 420.14 passed by the 1963 session of the Oklahoma State Legislature provides as follows:

> "Section 1. Nonresidents—Prohibition on storage or dispensing.
>
> "The State Liquefied Petroleum Gas Administrator shall not issue or renew any registration permit or license to any person, firm, or corporation, who is a resident of, or whose principal place of business is located in, a state other than Oklahoma unless the laws of such other states, and the rules and regulations of the authority governing the storage and dispensing of liquefied petroleum gas permit the operation of such business by citizens, firms, or corporations of Oklahoma under the same or substantially similar terms and conditions as those required for such operation in this state."

Plaintiff corporation the Ozark Butane Company, Inc., is an Arkansas corporation domesticated to do business in Oklahoma. The plaintiffs Jack Gorum and Charles Gorum are individuals, residents of Arkansas, and stockholders of the plaintiff corporation. The defendant Oklahoma Liquefied Petroleum Gas Board is a regulatory administrative agency of the State of Oklahoma created by Title 52 O.S.A. 420.3. Defendant W .D. Rush is the Administrator of said Board. This Board promulgates rules and regulations and

enforces the laws of the State of Oklahoma relating to the liquefied petroleum gas industry in the State of Oklahoma.

The intervenor Oklahoma Liquefied Petroleum Gas Association is an association of liquefied petroleum gas dealers doing business in Oklahoma. Said association through intervention supports the position taken here by the defendant Board and its Administrator.

The plaintiff corporation is engaged in the wholesale and retail transportation, distribution, purchase and sale of liquefied petroleum gas with installations and customers in both Oklahoma and Arkansas. In the past it has been issued a registration permit by the defendant Board to so engage in such activities in Oklahoma under the provisions of Title 52 O.S.A. 420.4. Such a registration permit expires on September 1st of each year. The last registration permit issued to the plaintiff corporation Ozark Butane Company, Inc., by the defendant Board expired on September 1, 1963. The defendant Board upon application refused to issue the plaintiff corporation a registration permit for the year September 1, 1963, to August 31, 1964, by reason of the provisions of Title 52 O.S.A. 420.14 passed by the 1963 Oklahoma Legislature as said law is applied to the plaintiff corporation. This refusal of the defendant Board was in conformity with the legal opinion of the Attorney General of the State of Oklahoma.

The operation of the plaintiff corporation involves the purchase of liquefied petroleum gas at locations in Oklahoma, its transportation by plaintiff corporation transport trucks to its plant in Siloam Springs, Arkansas, where it is stored in facilities there located, its subsequent transportation by other plaintiff corporation transport trucks to installations in Oklahoma (there being four of such in Oklahoma), where it is again stored and subsequently moved from said storage and sold by plaintiff corporation to its customers in Oklahoma.

At the pre-trial hearing herein the parties agreed that for the purposes of this litigation the laws, rules and regulations of the State of Arkansas regarding the transportation, storage and dispensing of liquefied petroleum gas do not permit the operation of such business under the same or substantially similar terms and conditions as those required by the laws, rules and regulations of the State of Oklahoma.[1]

If the statutes of the two states contained similar terms and conditions the remedy of the plaintiff corporation would be to compel the issuance of the desired registration permit and not to attack the law as being unconstitutional and void, which is the relief prayed for herein by the plaintiff corporation.

From the evidence in this case the liquefied petroleum gas operation in Oklahoma which is involved herein appears to be accomplished entirely by the plaitiff corporation, an Arkansas corporation, as such. The plaintiff corporation was the recipient of past Oklahoma registration permits and made the application for an Oklahoma registration permit which was rejected and is now involved in this litigation. It does not appear that either of the individual plaintiffs individually applied for the above mentioned registration permit which was denied by the defendants. They do refer to their individual installation permits in Oklahoma in the Complaint but offered no evidence in connection with such type permits. The evidence indicates that an Oklahoma company was formed by the individual plaintiffs for the purpose of making an application for a registration permit in Oklahoma but such company is a separate entity and is not a party hereto. Furthermore, the evidence indicates that such Oklahoma company abandoned its efforts to obtain a registration permit in Oklahoma. The individual plaintiffs must therefore be treated as surplus and unnecessary parties herein.

---

[1] Compare 52 O.S.A. 420.1 to 420.14 with 53 Ark. Stat. 702 to 728.

The grounds of attack against said law urged by the plaintiff corporation will be treated in the order above set out.

With reference to said law denying the plaintiff corporation the privileges and immunities of the citizens of the several states, this ground of complaint is answered by the holdings that such privileges and immunities are afforded only to individuals and not to corporations. See Asbury Hospital v. Cass County, North Dakota, 326 U.S. 207, and Sellover Bates & Co. v. Walsh, 226 U.S. 712.

With reference to said law denying the plaintiff corporation the equal protection of the laws, it is true that the plaintiff corporation is a person and is entitled to this protection if within the jurisdiction of the state. However, it is found that since September 1, 1963, the plaintiff corporation has not been within the jurisdiction of the State of Oklahoma as required before being entitled to such protection. This is so because since said date the plaintiff corporation has not satisfied the conditions required by the State of Oklahoma in order for it as a foreign corporation to be entitled to enter and do business in Oklahoma in connection with liquefied petroleum gas operations. The case of Fire Association of Philadelphia v. New York, 119 U.S. 110, 30 L. Ed. 342, holds:

> "The state having the power to exclude entirely, has the power to change the conditions of admission at anytime, for the future, and to impose as a condition the payment of a new tax, or a further tax, as a license fee. If it imposes such license fee as a prerequisite for the future, the foreign corporation, until it pays such license fee, is not admitted within the state or within its jurisdiction. It is outside, at the threshold, seeking admission, with consent not yet given. * * * It could not be of right within such jurisdiction, until it should receive the consent of the state to its entrance therein under the new provisions; and

such consent could not be given until the tax, as a license fee for the future, should be paid."

The fact that the plaintiff corporation was within the State of Oklahoma prior to September 1, 1963, is of no avail after that date unless the changed conditions, which the State of Oklahoma had a right to impose, are met as and when required. Nor is the fact that the plaintiff corporation has been permitted to continue to operate in Oklahoma since September 1, 1963, under and by virtue of a temporary restraining order of this Court which was extended by agreement of the parties, sufficient to put the plaintiff corporation within the State of Oklahoma with the consent of the State of Oklahoma, or within the meaning and purview of the equal protection clause of the 14th Amendment. See Fire Assn. of Phila. v. New York, supra. Nor is the fact that the plaintiff corporation (for the first time) a few days before September 1, 1963, "domesticated" as a foreign corporation with the appropriate agency of the State of Oklahoma sufficient to put the plaintiff corporation within the State of Oklahoma within the meaning and purview of the equal protection clause of the 14th Amendment. The right of the plaintiff corporation to engage in the liquefied petroleum gas business in Oklahoma depends upon the issuance of the said annual registration permit by the State of Oklahoma, as provided by its laws. When there are both general laws and special laws relating to the right of a foreign corporation to do business within a state, the special laws are controlling and must be complied with. St. Louis Ry. Co. v. Commercial Ins. Co., 139 U.S. 223; Central Life Assurance Society v. Tiger, 117 Okl. 108, 57 F. 2d 1182.

Plaintiff urges the case of City of St. Paul v. Dalsin (Minn. 1955) 71 N.W. 2d 855, as being decisive herein. This case is clearly distinguishable from the situation at bar. In St. Paul the Court was concerned with an individual who was a citizen of Minneapolis, Minnesota, and within the State of Minnesota complaining about a St.

Paul, Minnesota, ordinance which imposed conditions on him not required of other individuals who were non-residents of St. Paul. Here, we are concerned with a foreign corporation, not within the state, but desiring to enter and do business within the state but unable to comply with the conditions prescribed and required by the state before such permission is granted.

With reference to said law denying the plaintiff corporation due process of law, it is clear from the authorities that a state may entirely bar a foreign corporation from doing business in the state. See The Lafayette Ins. Co. v. French, 18 How. 404, 15 L. Ed. 451; The Horn Silver Mining Co. v. The People of the State of New York, 143 U.S. 305, 36 L. Ed. 164; Hanover Fire Ins. Co. v. Carr, 272 U.S. 494, 71 L. Ed. 372; Lincoln Nat. Ins. Co. v. Read, 325 U.S. 673, 89 L. Ed. 1861. Moreover, a state may impose conditions upon a foreign corporation which must be satisfied before the foreign corporation may do business in the state, provided, the conditions are not repugnant to the Constitution or laws of the United States. See The Lafayette Ins. Co. v. French, supra. The case of Asbury Hospital v. Cass County, North Dakota, supra, provides that the 14th Amendment to the United States Constitution does not deny to a state the power to exclude a foreign corporation from doing business within it. Furthermore, there is not a denial of due process because a foreign corporation permitted to do business in a state acquires property in the state during such privilege and then must dispose of such property later on when new conditions to do business are imposed which cannot be met.

With reference to said law being an interference with interstate commerce, the activities and operations of plaintiff corporation in Oklahoma amount to intrastate commerce and not interstate commerce.

From the evidence adduced it is apparent that plaintiff's over-all operations traverse state boundaries in the transportation and sale of liquefied petroleum gas. The busi-

ness headquarters of plaintiff is in the State of Arkansas. Orders are received and billings sent out from this point. However, plaintiff transports its gas from Arkansas and places it in storage tanks located in Oklahoma. Said gas is subsequently sold and delivered to Oklahoma consumers as it is needed. Upon reaching these storage tanks in Oklahoma the interstate aspect of the operation ends. The subsequent sale and movement of the gas is an intrastate activity and a purely local business clearly subject to local business controls. See 60 A.L.R. 1479, section e; Fletcher Vol. 17, section 8410, and cases thereunder. That local liquefied petroleum gas operations is such an activity over which the local authorities may prescribe appropriate regulations is not to be seriously questioned. The gas stored by plaintiff in Oklahoma has come to rest in a place wherein it is to be used or finally disposed of. Property so situated undoubtedly may be taxed by the state wherein it is located though in the current of interstate commerce. Minnesota v. Blasius, 290 U.S. 1; 78 L. Ed. 131. The purely local nature of the activity here in question is evident. A state may regulate matters of local concern over which Federal authority has not been exercised even though the regulation has some impact on interstate commerce, provided, that the regulation does not discriminate against or place an embargo on interstate commerce, that it safeguards an obvious state interest and the local interest outweighs whatever national interest there might be in the prevention of state regulation. Cities Service Gas Co. v. Peerless Oil and Gas Co., et al., 340 U.S. 179, 95 L. Ed. 190. As viewed by this Court the storage and sale of liquefied petroleum gas in Oklahoma is an intrastate activity carried on by a foreign corporation therein and a matter of local concern. The regulation of such industry and activity is a proper exercise of the state's power. Should, however, the over-all operation, considering that there are present interstate aspects, be sufficiently impressed with the interstate quality so as to retain such status—as relates to the functions within Oklahoma—it is felt that the

regulations imposed are not an unreasonable burden upon interstate commerce and that the local nature of the activity and the obvious state interest outweighs the national interest as is envisioned by the commerce clause of the United States Constitution. Panhandle Eastern P. L. Co. v. Michigan Public Service Comm., 341 U.S. 329, 95 L. Ed. 993 There is no absolute prohibition here of interstate commerce nor an embargo against it. The regulations are a reasonable control of a matter of a local nature and of local concern.

With reference to the last ground of attack, namely, that said law amounts to an abuse of the police power of the State of Oklahoma, the Court fails to find that this principle of law is involved in the facts of this case. We are here confronted with a situation concerning the right of a state to bar a foreign corporation from doing business within it or impose conditions to be met prior to the exercise of such privilege. Since the state may entirely bar a foreign corporation from doing business within its confines it naturally follows that a state may impose any conditions it sees fit, provided the Constitution and laws of the United States are not violated. The United States Supreme Court said in Paul v. Virginia, 8 Wall. 168:

> "Having no absolute right of recognition in other states, but depending for such recognition and enforcement of its contracts upon their assent, it follows as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely, they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion."

We have shown above that the privileges and immunities clause, the equal protection of the laws clause, the due

process of law clause, and the interstate commerce provisions of the United States Constitution and laws, are not violated. The police power of the state is simply not here involved. The exercise of police power by a state is aimed at the conduct, activities and operations of people within the state in the interest of the health, welfare and safety of the people of the state in general. If the plaintiff corporation were permitted to enter Oklahoma and engage in the liquefied petroleum gas business therein under a registration permit, then the plaintiff corporation would be subject in its operation to comply with the pertinent laws, rules and regulations prescribed by the State of Oklahoma in the exercise of its police power in regulating the liquefied petroleum gas industry within its borders. The plaintiff corporation since September 1, 1963, has ceased to be subject to the police power regulations of Oklahoma save only by the temporary restraining order of this Court entered to hold the status quo and not to grant any permanent rights to the plaintiff corporation.

In view of the foregoing, the Court finds that Title 52 O.S.A. 420.14 is valid and constitutional as applied to the plaintiff corporation. Accordingly, the Complaint herein should be dismissed and the temporary restraining order held in effect herein by agreement should be dissolved. Counsel for the defendants will prepare a judgment to such effect for the signature of the Court and entry herein.

Dated this 17th day of February, 1964.

s/ JOHN C. PICKETT
John C. Pickett
United States Circuit Judge

s/ LUTHER BOHANON
Luther Bohanon
United States District Judge

s/ FRED DAUGHERTY
Fred Daugherty
United States District Judge

Judgment

The above entitled and numbered cause coming on to be heard on the merits on the 1st day of November, 1963, at 9:30 a.m., pursuant to order of the Court, said plaintiffs being present by its attorney, David M. Thornton, the defendants, by Lee W. Cook, Assistant Attorney General of Oklahoma, and intervenor, by its attorney, Duke Duvall, and the Court having heard the facts stipulated by all parties, the evidence and arguments of counsel, and upon due consideration of the briefs filed herein and being fully advised in the premises, finds that the plaintiff should be denied the relief prayed for in its complaint, it is therefore,

ORDERED, ADJUDGED AND DECREED, that Senate Bill No. 122 of the 1963 Oklahoma Legislature, officially designated as 52 O.S. Supp. 1963, § 420.14, is valid and constitutional as set forth in the Court's memorandum opinion filed herein on the 17th day of February, 1964; that the complaint filed herein is hereby dismissed and the temporary restraining order heretofore entered and held in effect by agreement of counsel is hereby dissolved.

Dated this 16th day of April, 1964.

s/ JOHN C. PICKETT
John C. Pickett
United States Circuit Judge

s/ LUTHER BOHANON
Luther Bohanon
United States District Judge

s/ FRED DAUGHERTY
Fred Daugherty
United States District Judge

Approved as to Form:

s/ DAVID M. THORNTON
Attorney for Plaintiff

s/ LEE W. COOK
Attorney for Defendant

s/ DUKE DUVALL
Attorney for Intervenor

Judgment Entered in Civil Docket on April 16, 1964

s/ ADELAIDE HOSLSTON, Deputy

Order Overruling Plaintiffs' Motion For New Trial

Upon consideration of plaintiffs' Motion for a New Trial and supporting brief and the answer brief filed to said Motion by the defendants, the Court is of the opinion that said Motion for New Trial should be denied.

It is, therefore, ordered that the plaintiffs' Motion for New Trial is denied and the order s ying execution of judgment entered herein by the Court under date of April 16, 1964, is vacated and of no further force and effect.

Dated this 12th day of June, 1964.

s/ JOHN C. PICKETT
John C. Pickett
United States Circuit Judge

s/ LUTHER BOHANON
Luther Bohanon
United States District Judge

s/ FRED DAUGHERTY
Fred Daugherty
United States District Judge